UNITED STATES TAX COURT
Washington, D.C. 20217

DONALD ZIMMERMAN,	)	
	)	
Petitioner,	)	
	)	
v	)	Docket no. 8124-01
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
	)	
Respondent.	)	

ORDER OF DISMISSAL AND DECISION

On March 28, 2001, respondent issued a joint notice of deficiency to Donald and Susan Zimmerman determining deficiencies in, and accuracy-related penalties under section 6662(a) on, the Zimmermans' Federal income taxes for 1996 and 1997. The deficiencies in income taxes arise principally from respondent's determination that the Zimmermans failed to report various items of income, including income from a trust that respondent determined was a sham trust with no economic substance.

Donald and Susan Zimmerman filed separate petitions for redetermination with the Court. (Hereinafter all references to petitioner are to Donald Zimmerman). At the time that the petition was filed, petitioner resided in Visalia, California.

The petition filed in his case includes allegations that: (1) the notice of deficiency is arbitrary and void because there is no evidence that petitioner transferred his property rights to the United States government; (2) respondent bears the burden of proving that the Internal Revenue Code is binding on

petitioner; and (3) the act of imposing a tax is tantamount to theft. Significantly, the petition does not deny the receipt of unreported income nor does the petition deny that the trust in issue was not a sham trust with no economic substance. See Parker v. Commissioner, 117 F.3d 785 (5th Cir. 1997); White v. Commissioner, T.C. Memo. 1997-459.

On August 13, 2001, respondent filed a motion to dismiss for Failure to State a Claim Upon Which Relief May Be Granted. Respondent included within the motion a request that "the Court award damages to the United States in an appropriate amount, pursuant to I.R.C. § 6673, based upon the fact that petitioner has instituted these proceedings primarily for the purpose of delay and/or petitioner's position in the present case is frivolous or groundless."

By Order dated August 14, 2001, petitioner was directed to file a proper amended petition setting forth with specificity each error allegedly made by respondent in the determination of the deficiencies and separate statements of every fact upon which the assignments of error are based.

The matter was called for hearing at the Court's motions Sessions in Washington D.C., on September 19, 2001, and September 26, 2001. Counsel for respondent appeared at both hearings and presented argument in support of respondent's motion to dismiss. Although there was no appearance by or on behalf of petitioner at either hearing, the Court did receive from petitioner an amendment to petition that repeated the same arguments set forth in the petition.

Rule 34(b)(4) requires that a petition filed in this Court contain a clear and concise assignments of each and every error that the taxpayer alleges to have been committed by the Commissioner in the determination of the deficiencies and the penalties in dispute. Rule 34(b)(5) further requires

that the petition contain a clear and concise lettered statements of facts on which the taxpayer bases the assignments of error. See Jarvis v. Commissioner, 78 T.C. 646, 658 (1982).

Neither the petition nor the amendment to petition filed in ther case satisfies the requirements of Rule 34(b)(4) and (5). Specifically, there is neither assignment of error nor allegation of fact in support of any justiciable claim. Rather, petitioner's pleadings contain nothing but frivolous and groundless arguments. Under the circumstances, we see no need to catalog these arguments and painstakingly address them. As the Court of Appeals for the Fifth Circuit has remarked: "We perceive no need to refute these arguments with somber reasoning and copious citation of precedent; to do so might suggest that these arguments have some colorable merit." Crain v. Commissioner, 737 F.2d 1417, 1417 (5th Cir. 1984).

Because petitioner's pleadings fail to state a claim upon which relief can be granted, we will grant the part of which relief can be granted, we will grant that part of respondent's motion that seeks to dismiss ther case. See Scherping v. Commissioner, 737 F.2d 478 (8th Cir. 1984); Rules 34(a)(1), 123(b).

We turn now to respondent's request that we impose a penalty pursuant to section 6673.

Section 6673(a)(1) authorizes the Tax Court to require a taxpayer to pay to the United States a penalty not in excess of $25,000 whenever it appears that proceedings have been instituted or maintained by the taxpayer primarily for delay or that the taxpayer's position in such proceeding is frivolous or groundless. Although it appears that petitioner instituted ther proceeding primarily for purposes of delay, we will not impose a penalty pursuant to section 6673(a)(1).

Nevertheless, we will take ther opportunity to admonish petitioner that the Court may impose such a penalty should he return to the Court and advance similar arguments in the future.

Upon due consideration and for cause, it is hereby

ORDERED: That so much of respondent's Motion To Dismiss For Failure To State A Claim Which Relief May Be Granted, filed August 13, 2001, that moves to dismiss is granted. It if further

ORDERED AND DECIDED: That petitioner is liable for deficiencies in, and accuracy-related penalties on, her Federal incomes taxes for the years and in the amounts as follows:

		Accuracy-Related Penalty
Year	Deficiency	Section 6662(a)
1996	$200,460	$40,093
1997	$218,872	$43,774

It is further

ORDERED: That so much of respondent's Motion To Dismiss For Failure To State A Claim Which Relief May Be Granted, filed August 13, 2001, that moves for the imposition of a penalty under Section 6673(a)(1) is denied.

(Signed) Thomas B. Wells

Thomas B. Wells
Chief Judge

Entered: **OCT 5 2001**

UNITED STATES TAX COURT
Washington, D.C. 20217

SUSAN ZIMMERMAN	)
	)
Petitioner,	)
	)
v.	)Docket no. 8127-01
	)
COMMISSIONER OF INTERNAL REVENUE,	)
	)
Respondent.	)

ORDER OF DISMISSAL AND DECISION

On March 28, 2001, respondent issued a joint notice of deficiency to Donald and Susan Zimmerman determining deficiencies in, and accuracy-related penalties under section 6662(a) on, the Zimmermans' Federal income taxes for 1996 and 1997. The deficiencies in income taxes arise principally from respondent's determination that the Zimmermans failed to report various items of income, including income from a trust that respondent determined was a sham trust with no economic substance.

Donald and Susan Zimmerman filed separate petitions for redetermination with the Court. (Hereinafter all references to petitioner are to Susan Zimmerman). At the time that the petition was filed, petitioner resided in Visalia, California.

The petition filed in her case includes allegations that: (1) the notice of deficiency is arbitrary and void because there is no evidence that petitioner transferred her property rights to the United States government; (2) respondent bears the bur-

den of proving that the Internal Revenue Code is binding on petitioner; and (3) the act of imposing a tax is tantamount to theft. Significantly, the petition does not deny the receipt of unreported income nor does the petition deny that the trust in issue was not a sham trust with no economic substance. See Parker v. Commissioner, 117 F.3d 785 (5th Cir. 1997); White v. Commissioner, T.C. Memo. 1997-459.

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impose a penalty pursuant to section 6673(a)(1). Nevertheless, we will take ther opportunity to admonish petitioner that the Court may impose such a penalty should she return to the Court and advance similar arguments in the future.

Upon due consideration and for cause, it is hereby

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		Accuracy-Related Penalty
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It is further

ORDERED: That so much of respondent's Motion To Dismiss For Failure To State A Claim Which Relief May Be Granted, filed August 13, 2001, that moves for the imposition of a penalty under Section 6673(a)(1) is denied.

(Signed) Thomas B. Wells

Thomas B. Wells
Chief Judge

Entered: **OCT 5 2001**

FILED
United States Court of Appeals
Tenth Circuit
Dec. 9 2002
PATRICK FISHER
Clerk

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

SUSAN ZIMMERMAN,

Petitioner – Appellant,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent – Appellee.

No. 02-9004
(Tax Court no. 8127-01)

DONALD ZIMMERMAN,

Petitioner – Appellant,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent – Appellee.

No. 02-9005
(Tax Court no. 8124-01)

ORDER AND JUDGMENT*

Before SEYMOUR, EBEL, and O'BRIEN, Circuit Judges

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

After examining the briefs and appellate record, the panel has determined, unanimously that oral argument would not materially assist the determination of these appeals. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34(a)(1). The cases are therefore ordered submitted without oral argument.

We have consolidated these appeals for the purpose of disposition. In No. 02-9004, Susan Zimmerman petitions for review of decisions of the Tax Court granting the respondent's motion to dismiss her petition and denying her motion for reconsideration/motion for new trial. Similarly in No. 02-9005, Donald Zimmerman petitions for review of decisions of the Tax Court dismissing his petition and denying his motion for reconsideration/motion for new trial. We dismiss Donald Zimmerman's petition for a lack of jurisdiction. We affirm the Tax Court's decisions concerning Susan Zimmerman's petition.

1. **Timeliness of Donald Zimmerman's petition for review**

At the outset, we must address whether we have jurisdiction over Donald Zimmerman's petition for review. Under Fed. R. App. P. 13(a)(1), a petitioner must file his petition for review within ninety days of the entry of the Tax Court's decision. If the petitioner makes a timely motion to vacate or revise the Tax Court's decision, however, the time to file a notice of appeal runs from the entry of the order disposing that motion. *Id.* 13(a)(2).

The Tax Court entered a final order in Donald

Zimmerman's case on October 5 2001. He filed a timely motion for reconsideration on December 4 2001. The Tax Court denied his motion on December 7, 2001. Mr. Zimmerman's former counsel mailed a notice of appeal to the Tax Court 125 days later, on April 11 2002.

This April 11, 2002 notice was untimely. Mr. Zimmerman's former counsel, however, also sent a letter to the Tax Court stating she had mailed an original notice of appeal to the Tax Court on February 26, 2002, eighty-one days after the motion for reconsideration was denied. Her letter claimed the original notice of appeal "evidently was destroyed in the mail" and that "[w]e received in our office a mangled representation of we think the appeal." [sic] R. doc 14, letter of April 11, 2002. Counsel's letter contained a photocopy of the original notice of appeal, but no registered or certified receipt and no evidence of the original envelope, its postmark date or its "mangled" contents.

A notice of appeal is deemed delivered on the date of mailing, as established by a United States postmark. 26 U.S.C § 7502(a), (b); 26 C.F.R. § 301.7502-1(b)(iii). Use of registered or certified mail provides prima facie evidence that the notice of appeal was delivered; the date of registration or the date of the U.S. postmark on the certified mail receipt is treated as the postmark date. 26 U.S.C. § 7502(C)(1); 26 C.F.R. 301.7502-1(C)(2). Mr. Zimmerman has presented no evidence that the original notice of appeal was postmarked within the prescribed time period. We have only counsel's unsworn letter and a purported copy of the original notice of appeal to evidence the first attempt at filing a notice of appeal. These items are insufficient as a matter of law to establish timely delivery and filing. Therefore, we dismiss Donald Zimmerman's petition for review as untimely.

2. **Susan Zimmerman's petition**

The Tax Court dismissed Susan Zimmerman's petition for a failure to state a claim upon which relief could be granted. It further denied her motion to reconsider/motion for new trial (which it termed a motion to vacate), because the motion did nothing but repeat arguments previously raised. We review the dismissal of Ms. Zimmerman's Tax Court petition for failure to state a claim *de novo*. *Fox v. Comm'r*, 969 F.2d 951, 952, (10th Cir. 1992). The Tax Court's denial of her motion to vacate is reviewed for an abuse of discretion. *Drobny v. Comm'r*, 113 F.3d 670, 676, (7th Cir. 1997).

Having reviewed the briefs, the record and applicable law in light of the above-referenced standards, we AFFIRM the challenged Tax Court decisions in No. 02-9004 for substantially the same reasons stated in the Tax Court's orders of October 5, 2001 and December 7, 2001. We DISMISS No. 02-9005, for lack of appellate jurisdiction. All pending motions are DENIED.

Entered for the Court

David M. Ebel
Circuit Judge

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

SUSAN ZIMMERMAN, Petitioner – Appellant, v. COMMISSIONER OF INTERNALREVENUE, _ Respondent – Appellee.	No. 02-9004

ORDER
Filed January 7, 2003

Before SEYMOUR, EBEL, and O'BRIEN, Circuit Judges

Susan Zimmerman's petition for rehearing is denied.

The petition for rehearing en banc was transmitted to all of the judges of the court who are in regular active service. As no member of the panel and no judge in regular active service on the court requested that the court be polled, that petition is also denied.

Entered for the Court
PATRICK FISHER, Clerk of the Court

by:
Deputy Clerk

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

DONALD ZIMMERMAN, Petitioner – Appellant, v. COMMISSIONER OF INTERNAL REVENUE, Respondent – Appellee.	No. 02-9005

ORDER
Filed January 7, 2003

Before SEYMOUR, EBEL, and O'BRIEN, Circuit Judges

Donald Zimmerman's petition for rehearing is denied.

Entered for the Court
PATRICK FISHER, Clerk of the Court

by:
Deputy Clerk